UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA	)	CRIMINAL ACTION NO.
	)	2:18-cr-12
vs.	)	
	)	
RANDY SHELTRA,	)	
Defendant.	)	

SENTENCING
Tuesday, November 23, 2021
Burlington, Vermont

BEFORE:

THE HONORABLE CHRISTINA C. REISS,
District Judge

APPEARANCES:

BARBARA A. MASTERSON, ESQ., and ANDREW C. GILMAN, ESQ., U.S. Attorney's Office, 11 Elmwood Avenue, 3rd Floor, P. O. Box 570, Burlington, VT 05402-0570, Counsel for the Government

MARK A. KAPLAN, ESQ., Kaplan and Kaplan, 95 St. Paul Street, Suite 405, Burlington, VT 05402-0405, Counsel for the Defendant

ALEXANDRE BONNEVILLE, U.S. PROBATION

RANDY SHELTRA, DEFENDANT (VIA VIDEOCONFERENCE)

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Tuesday, November 23, 2021

(The following was held in open court at 1:31 PM.)

COURTROOM DEPUTY: Your Honor, the matter before the Court is criminal case number 18-CR-12-1, United States of America vs. Randy Sheltra. Representing the Government are Assistant United States Attorneys Barbara Masterson and Andrew Gilman; present for the defendant is his attorney, Mark Kaplan; the defendant is present via videoconference; and we are here for sentencing.

THE COURT: Good afternoon.

MR. KAPLAN: Good afternoon, your Honor.

THE COURT: Mr. Sheltra, you have waived your appearance here. We had a telephone conference yesterday, and your attorney advised me that you did not want to appear in person and did not want to take a COVID test and that one of the reasons would be that you would be in quarantine upon your appearance here.

I want to make sure that you are in fact knowingly waiving your appearance to be here at sentencing, because I told your attorney I would not want to see this issue come up later that you wanted to be present and we didn't accommodate that request.

So if you told me that you wanted to be present in person, I would simply continue the sentencing for another date.

Let's hear your preference on that.

THE DEFENDANT: Well, my preference, your Honor, at this point, we've had a number of people from the pod that I'm in that had tested positive for COVID. I've been vaccinated, and, you know, I thought that was going to be enough, but I -- I experienced limited symptoms, and so I don't know whether I am or not because I didn't want to take another test and be quarantined.

So what Mr. Kaplan expressed to you is accurate. We had asked for a 60-day delay on this and it got denied. If that were the case and if that 60 days was put in place, I would certainly prefer to be there, but that's -- that being said, I'm not going to expose other people if I don't have to to COVID.

THE COURT: All right. I would not give you a 60-day continuance. We would come back sometime next week, for example, for sentencing so you could be here in person.

THE DEFENDANT: Then --

THE COURT: Pardon me?

THE DEFENDANT: I see no reason to do that, your Honor. Let's just finish with it.

THE COURT: All right. I'm going to accept your waiver of appearance. I'm going to find that were we to transport you to the District of Vermont, we would needlessly expose you and others to potential infection from COVID-19. You are currently incarcerated in a location which has had

COVID-19. Even when people are vaccinated, they can contract it, and that includes our marshal and other staff. The Court's going to find that videoconference is the best reasonably available technology at this time, and under the CARES Act, the Court's going to find it's in the interest of justice to proceed by videoconference.

I have read the presentence report; the sentencing memoranda; your supplemental exhibit in support of the sentencing memoranda; the victim impact statement.

And let me make sure you have read the presentence report as well, Mr. Sheltra.

THE DEFENDANT: I have.

THE COURT: And have you had an opportunity to review it with your attorney?

THE DEFENDANT: Yeah. I talked to Mr. Kaplan about it, and he put forth the -- what you're looking at as far as our response.

THE COURT: All right. Anything inadequate about that review?

THE DEFENDANT: Just a couple of date things. The time -- you know, minor things. But I think Mr. Kaplan did a very good job of assessing the current situation.

THE COURT: Okay. I know you are making certain objections to the presentence report. The primary factual objection from the Court's perspective is you are challenging

the statements of what the Government is calling Victim 1 in paragraphs 24 through 31. This is the alleged statements from your niece.

THE DEFENDANT: Yes.

THE COURT: Are there any -- yes.

Are there any other factual errors in the report from your perspective?

MR. KAPLAN: Judge, I think --

THE DEFENDANT: Not -- not that I recall.

THE COURT: Not that you recall. And I'll turn to your attorney in case he sees some.

THE DEFENDANT: Okay.

THE COURT: So, Mr. Kaplan, go ahead.

MR. KAPLAN: I would just indicate that we have a general objection to all of the facts that might suggest he's guilty of the -- of the charged conduct, and our assumption is that the Court will make a decision on that based on what you heard at trial and/or the transcript, so we're not asking for an evidentiary hearing on that issue.

THE COURT: I did see you object to the presentence report somewhat in its entirety. I didn't see a specific objection to "This trial testimony is not accurate. That's not what happened." Do I have that right?

MR. KAPLAN: Yes.

THE COURT: Okay. And other than the statements from

the interview of Victim 1, are there any other specific facts that you contend are wrong in the presentence report?

MR. KAPLAN: No, your Honor.

THE COURT: How about from the Government's perspective? Any factual challenges to the presentence report?

MS. MASTERSON: No, your Honor.

THE COURT: All right. I will hear arguments on the inclusion of the interview of Victim 1, whether it should be in the presentence report, what the Court should do with it.

There are a number of guideline challenges. One is the use-of-the-computer enhancement. The other is obstruction of justice. And I raise for you *sua sponte* the issue of whether or not Mr. Sheltra should be prevented from accessing adult pornography when he's on supervised release. The circuits are addressing this condition with increasing focus. Second Circuit has not squarely ruled on that except that it seems to be developing by a case-by-case method.

And so I was thinking that I would add "You must not view, access, or possess images or videos depicting sexually explicit conduct involving adults unless a psychosexual evaluation determines that access to adult pornography will not threaten treatment goals or the safety of the community." It hasn't specifically been challenged by Mr. Kaplan, but I anticipate that we're going to get more case law on this.

Any objection to the Court's modifying of that condition

in that manner?

MR. KAPLAN: No, your Honor.

THE COURT: I can read it for you again if you'd like.

MS. MASTERSON: Would the Court do so, please.

THE COURT: Sure. "You must not view, access, or possess images or videos depicting sexually explicit conduct involving adults unless a psychosexual evaluation determines that access to adult pornography will not threaten treatment goals or the safety of the community."

MS. MASTERSON: I do know that there is a case in the Second Circuit that has addressed the use of child -- I'm sorry, adult pornography -- or maybe it's a district case, because Judge Murtha ruled, and I didn't know that this was going to be an issue, so if I had known, I would have accessed that cite, but I do know that Judge Murtha has had -- addressed this issue and found adult pornography would be detrimental and therefore included it over a defendant's objection in the terms and conditions of supervised release.

That said, it is an evolving legal issue, and I think that the way the Court has written it is appropriate. If there's going to be a modification, the Court hit it.

THE COURT: Mr. Kaplan?

MR. KAPLAN: I agree, your Honor. Thank you.

THE COURT: Okay. I think that lends it more to a case-by-case approach, and that seems to be the developing

consensus that there needs to be a basis in this particular case for denying access to adult pornography.

I'm going to tell you some of the things that I am thinking about in this case, and I hope to hear them in your sentencing arguments. But tell me what you want to tell me, whether I've addressed it or not.

With regard to the obstruction of justice, the defendant's testimony that he was not sexually interested in children has an objective component and a subjective component, and I recall that we saw I think at least one image of child pornography on his phone as impeachment evidence. The graphic communications certainly support that as well. But even if the Court said, yeah, denying that you're sexually interested in children is only a partial mistruth because you're also interested in a lot of other things, we have the statement with the Treena. So the testimony that "I thought I was talking with Treena" and the chronology of that is that Mr. Sheltra asked for the images from ER prior to the mention of anal sex, and it was the anal sex mention that made him think he was talking to Treena. So I'm interested in hearing your points of view on whether or not we have an obstruction of justice in those circumstances, whether we need both of them or if one is sufficient.

With regard to the computer enhancement, in a straightforward child pornography case, the Court has not been imposing the computer enhancement. For example, with

peer-to-peer sharing of child pornography, it's the means by which the offense is committed. There is no other way to do it other than through a computer. I have imposed it and I have imposed it very recently when the person is using the computer for actively soliciting child pornography, the person's in chat rooms, the person is finding ways to access alleged victims or child pornography or finding like-minded individuals. This case would certainly fall within that category.

With regard to Victim 1's statements, as the parties will recall, one of the issues in this case was whether or not Mr. Sheltra was going to pursue a defense theory that after his stroke his personality was changed and that this is stroke-related behavior. And the Government sought to rebut that line of defense with his niece's testimony, and I believe she was on the Government's witness list for that purpose. So she is in the case.

On the other hand, there are, from the Court's perspective, no sworn statements from her. She never testified before the grand jury. And her testimony is -- or her statements are quite inflammatory, and I was wondering whether it made sense in terms of fairness to both parties, which I assume both of you are going to dislike this, that I would keep paragraph 24, 29, and 31, with 31 being modified to indicate the "alleged" abuse, and the details of what Victim 1 is claiming excluded from the presentence report.

And my thoughts are I certainly respect the Government's position that it's not going to call Victim 1 as a witness, that it would be damaging to her, but unless it's captured in a sworn statement or grand jury testimony, I'm questioning whether I can find it is reliable. I think it's relevant that after the case was filed, this woman on her own reached out to law enforcement. I think it's important for her statements to indicate when she said the alleged abuse occurred and her reason for not pursuing it further, and I think it's relevant to hear how old Mr. Sheltra was when the victim says the abuse started and when it ended. The other details, I'm wondering why the Government should not have to prove those up. So I want to hear your arguments on that.

Of course, I want to hear what you think is the appropriate period of incarceration and supervision. I am not going to set aside the fact that we're in the middle of a pandemic and that Mr. Sheltra has contracted COVID during his incarceration and that programming and quarantining and segregation, you know, remain kind of the rule of what is happening during this pandemic. And I should say lack of programming. So these are very different conditions of incarceration, and at this point the Court does not know how long that's going to last.

I'm going to start with you, Mr. Kaplan, on all points, including 3553(a) factors; I'll ask Mr. Sheltra if he wants to

make a statement on his own behalf; I'll ask the Government for its arguments; I'll give Mr. Kaplan the last word; I will rule on the guideline challenges and the factual objection to the presentence report; I'll do a guideline calculation, analyze the 3553(a) factors, and notify the parties of their rights of appeal.

So, Mr. Kaplan.

MR. KAPLAN: Your Honor, I'll speak to the obstruction issue first and just make a general comment. The way I looked at my client's testimony had more to do -- I think the Court started off by saying there's objective and subjective issues with respect to obstruction, and what I focused on was the fact that my client testified consistently that he did not intend to commit these crimes.

Now, I'll acknowledge that there was some conflict on specific issues; in other words, whether or not, for example, he had any physical contact with a 15-year-old in Count 2. My client said he didn't. There was some evidence introduced that he did. But throughout the entire trial, he was consistent with the fact that he didn't intend to have sexual contact with a minor, and so that's what I think the focus should be on the issue of obstruction.

In other words, even though the jury found him guilty of these particular crimes, that doesn't mean that he intended to obstruct justice, that he was flagrant in his -- with respect

to telling the truth or not telling the truth.

THE COURT: Well, if it stayed on that, "I didn't intend to do any of it," that would be one thing. It went further than that, though. And there's -- it's not just some vague intent. If we take the messages to the third person about what was going to happen with ER, he says, "We were going to have sex. We couldn't do it because we were out on some country road, but, yeah, we were going to have sex."

MR. KAPLAN: But he also gave an explanation as to why he said that, and he said it was because of his intent with respect to the third person, what he was trying to get her to come out and talk about. Now, that may not be something that the Court believes to be true, necessarily. But again, it all goes back to, well, Mr. Sheltra said he said that for a particular reason. The jury may not have believed that, but it doesn't necessarily mean that in his own mind it wasn't true and that's what he was thinking.

I don't see a case here where, for example, there's a yellow car going down the road, everyone knows it's yellow, my client said "I saw it and it's red." It's not clear like that, because I think we're dealing all the way through the conflicting statement with what Mr. Sheltra's intent was. And I think it would be unfortunate to give an obstruction enhancement because there's a disagreement between what the Government witness says and what my client says without any

actual proof other than statements being made.

THE COURT: What if the Court takes him at his own word, his own written communications? What if the Court says, "I've got it in black and white what your intent was"? And yes, of course you're entitled to testify and say that wasn't my true intent and the jury can analyze it, but it's not just a he said/she said. There are written communications expressing intent.

MR. KAPLAN: Well, I mean, that's the crux of the issue. That's really this trial, this case, because he took the stand and said, "Sure, I said all those things, but here's why I said them. And the reason I said them wasn't for the purpose of having sex with a minor." And the jury apparently didn't believe that. But was he lying when he said that? I mean, you can take him -- if you take him at face value, then I -- which is what I'm assuming the jury did, although I don't know, but if you do that, then you're taking the position that he's lying on everything he says, and he's saying, "No, it's not right to take it at face value. That's what I meant when I said that."

So, you know, I can understand why someone, particularly in a case like this, might take it at face value, but I also think you have to understand that he has an explanation for why he said those things. To me the explanation's credible. He says, "I said all these things for a particular purpose." In

fact, I'll go back even further, which is the first set of emails that was between him and someone who was posing as the mother of a child. He literally was extremely surprised when that particular person raised the issue of having sex with a minor, and so that's what kind of convinced me that there was some truth in his statement that he never started out with the intent of wanting to have sex with a minor.

And I know I pointed this out to the jury that he genuinely was surprised by some of the responses he was getting from the people he was dealing with; by the time he dealt with the undercover agent, he no longer was surprised because he knew that kind of thing was going on. I don't see it as being flagrant or with an intent to obstruct justice.

THE COURT: Let's talk about what the Court thinks is the most direct example, and that's the Treena where the defendant testified that when he asked ER to send him pictures of her genitalia, he thought he was communicating with Treena, who was an adult woman with whom he was engaged in a sexual relationship, and his relationship with her involved anal sex, and that when ER mentioned engaging in anal sex with her boyfriend, that's when he thought it was Treena but actually he asked for the pictures before there was any mention of anal sex.

MR. KAPLAN: So there was -- there was a line of emails between Mr. Sheltra and Katrina, and I think I marked it

as an exhibit. I don't recall if I admitted it or not. I think I did. And that -- the time frame on those emails was pretty close in time to when he was -- when he was dealing with ER. And so when I showed that to him, he said, "That's what I meant." You know, it may be inconsistent, you know, in some respects, but it's not inconsistent with the fact that he was having these email conversations with Katrina, that they were similar in nature, and that's who he thought he was dealing with when he got the responses.

THE COURT: You said Katrina, but I think you mean Treena?

MR. KAPLAN: Yes.

THE COURT: Yes. Maybe that's her nickname. I don't know. Okay.

MR. KAPLAN: I'm wondering if that's enough to find obstruction. I mean, the thing that's always bothered me with regard to the Sentencing Guidelines with respect to acceptance of responsibility and obstruction is the defendant has to decide am I going to go to trial and take the risk of losing three levels for -- for acceptance of responsibility, so it's a real inhibitor for someone in a close case who thinks that they have a triable case.

And I also have to tell clients if you're going to try a case and you're going to testify, there's an excellent chance the Government's going to ask for obstruction, and so to me the

obstruction should be somewhat limited to major things in the case, not discrepancies between some minor issues that really don't go to the heart of the case.

Like, these pictures don't show, necessarily, that he was interested in having a sexual relationship with a minor, whether or not he asked for them, and so I think it's an unfortunate prohibition -- on inhibition on people testifying.

THE COURT: Well, the Court has not always denied acceptance of responsibility or imposed an enhancement for obstruction of justice for anybody who testifies at trial. It has to be a fairly -- it has to be a factual issue, and the testimony has to be false. And the Government and the Probation Office has pointed out two things that they contend are factually false: sexual interest in children and the belief that communications with ER were really with Treena. So those are things that could be proved or disproved, and so it's not just: You took the stand; you testified at trial; you shouldn't have gone to trial; we're denying acceptance of responsibility. These are facts that could be proved true or not true.

MR. KAPLAN: But to me a sexual interest in children, the only thing that I can see as what the Court's referring to is that he asked for pictures, allegedly, as opposed to his testimony that he wasn't interested, and he was consistent with that throughout the -- his entire testimony.

THE COURT: Well, the Court's pointing to child pornography on his phone; statements about wanting to have sex with children, very detailed statements, and not just one child but both the person he thought he was communicating with before the events and then the undercover officer after the events; his statements to ER about what he wanted her to photograph. So it isn't just kind of a vague "you like this or you don't like this and you're interested in that." I mean, there is some objective evidence in Mr. Sheltra's own words about what he likes and what he wants.

MR. KAPLAN: That's if you take his words at face value.

THE COURT: Right. And I understand what his explanation was at trial.

MR. KAPLAN: On the computer issue, I do understand that the Court on occasion has not applied the two-level enhancement, but as the Court just indicated, the Court may see a distinction between just having pornography -- child pornography on your computer and actually using your computer to solicit illegal activity. But from my perspective, I don't know why it's different to email someone and talk about these subjects than it would be to meet a person -- to meet, you know, in person with someone and carry on the same conversation. I don't see a distinction between the two in terms of the severity of it, why -- why there should be a

two-level enhancement for saying to someone on a computer "I'm interested in some sexual activity with you or your daughter" or sees the person and meets the person in person and makes -- you know, indicates the same sentiment.

THE COURT: I think in the latter case, if they met in person and indicated the same sentiment, there's probably an enhancement for that as well. It's not a computer enhancement, but don't you think that would result in some form of guideline focus on that behavior in addition to possessing child pornography? So if somebody is in possession of child pornography and in addition to that they meet someone in person and actively solicit the production of child pornography, I'm confident that would find its way into a presentence report, and I can't think off the top of my head what the enhancement would be, but my guess is Mr. Bonneville could find it pretty fast.

MR. KAPLAN: Well, I wasn't necessarily referring to manufacturing of child pornography or production. I was talking more along the lines of if my client -- if my client uses a computer to solicit sexual activity with someone, I don't see the difference between that and him talking to that person at his home, for example, or on the street or some other place and not through the use of a computer. And I'm sure if there's an enhancement for that, Alexandre will find it. He's usually found all of them in my cases. So I don't see the

distinction. And today computers are so common. Everyone uses computers for absolutely everything. It just seems kind of antiquated, I think, to give someone an enhancement for the use of a computer.

THE COURT: Would you agree with me that the Second Circuit has approved the use of a computer enhancement in these types of cases?

MR. KAPLAN: Yes.

THE COURT: Okay.

MR. KAPLAN: But I'm also thinking in terms of -- and I will make this argument later when you get to the 3553(a) factors. I think one of the things to look at is, okay, this is what his guideline looks like, but if we don't apply these certain enhancements, which I think may not be fair, then you're looking at a more reasonable sentence than you would be under the federal Sentencing Guidelines, and that's why I raise that issue.

THE COURT: So I agree, and I've said it before, that the Court's not making new law. The child pornography guidelines have been criticized by lots of courts, including the Second Circuit.

MR. KAPLAN: The one that really bothers me is the issue with the niece. I don't see how an unsupported allegation - I couldn't even do the math. It's over 30 years ago - where the police apparently investigated and decided not

to bring charges, no one ever hears anything about it again, all of a sudden it shows up in this case and the Government makes no effort whatsoever to prove it, I don't know why it's okay for that to be in the presentence report, because the obvious conclusion that anyone's going to draw from reading that, if it's just one line, is that it's true and that my client engaged in that type of conduct, and it's totally unsubstantiated, and no one's had the opportunity to -- to provide any evidence with -- I think the Government should have been required to do that if it's going to stay in the presentence report.

THE COURT: Well, the Government can establish some things, which is why I suggested that certain paragraphs could remain in the presentence report, because they are uncontested and uncontestable. This person reached out after she heard about Mr. Sheltra's case and made a report, that she explained the dates when it occurred and the fact that she backed off because her family was not supportive, and she provided a date range which would show for some of it Mr. Sheltra was a minor himself and other portions of it he was an adult. And those are things that she said, and it's the fact that a report was made, not the truth of it, that was raised as an issue at trial.

MR. KAPLAN: Except, Judge -- were you finished?

THE COURT: I was.

MR. KAPLAN: Except that it carries more weight than what the Court's implying, I would suggest. I mean, even Probation says, all right, we're going to give a five-level enhancement because there are two offenses that occurred, Count 1 and Count 2, but even if we didn't count one of those, the five-level enhancement would still count because of the conduct with his niece.

THE COURT: But the Court doesn't even need the conduct with the niece for the five-level enhancement, so I wasn't planning on relying on it for that purpose.

MR. KAPLAN: I wasn't objecting to the -- the way it's being applied, but --

THE COURT: So -- so let's drill down on this, because it's an important issue, and I have concerns that we have only reliable evidence at sentencing. And if the Court winnows the facts in the presentence report to a report was made; the woman alleged abuse during these years; this is why it wasn't pursued, according to her report; and these are the ages of the alleged victim and Mr. Sheltra at the time, I think that should be fair game because this person was on a witness list at trial, and I believe she was on the witness list solely because there was a potential that there was going to be a defense that this behavior was caused by a stroke and the Government wanted to establish that it predates the stroke. So what should the Court do with that?

MR. KAPLAN: I don't think the Court should include it.

THE COURT: Okay.

MR. KAPLAN: I mean, it's not fair to say that she dropped it. My understanding is that the police investigated it, that they came, they did an investigation, and decided not to bring charges. That's my understanding. And I don't think just because someone is on the witness list and makes a statement and the defense hasn't, you know, made an effort to go find that person and speak with them or disprove it, my way of thinking always was if you want something like that in the presentence report, then whoever wants it in needs to prove it.

THE COURT: So in paragraph 29, it says "V1 reported the sexual abuse she suffered to the police sometime in the 1980s. However, she ultimately did not go through with her complaint due to backlash she faced from her family." And you're saying that's factually inaccurate and the law enforcement actually investigated it and decided it wasn't reliable?

MR. KAPLAN: I didn't say law enforcement decided it wasn't reliable. My understanding was law enforcement investigated it and didn't bring charges. Now, I don't know if maybe they didn't bring charges because she said, "I don't want to pursue it." That's a possibility. But I just think there's too many questions about this, and reliability hasn't been

established. And, I mean, I guess it's somewhat esoteric in the sense it's not affecting his guideline, I don't think.

THE COURT: It isn't affecting the guideline, and the Court is aware of the reliability of the details and has raised that as a reason for taking it out of the presentence report. So it isn't going to drive the sentence in this case, but it is a fact that was part of the trial and not something that's coming out for the first time in the presentence report where somebody nobody knew about says, "Hey, I'm also a victim and I want to be in the presentence report." And I kind of want to capture that trial evidence which wasn't presented but the Government made an offer of proof that it was prepared to do so.

MR. KAPLAN: There is an argument that it really is coming out for the first time, because even though this person was on the Government's witness list and we had an idea of what she was going to say because we had a police report, she didn't testify. It didn't come out. There wasn't any testimony on it. And in most cases, that's the end of it. It doesn't show up in the presentence report.

THE COURT: With the definition of "relevant conduct," do you agree that there's lots of things that don't come up at trial?

MR. KAPLAN: I think if we were going to try and include -- yes, of course. I think if we were going to try and

include this as relevant conduct, you'd really focus on the length of time that's elapsed, and I don't think it would come in as relevant conduct in that sense given how long it's been.

THE COURT: Okay.

MR. KAPLAN: I think -- were those your three issues?

THE COURT: Yes, I believe that was.

Do you want to talk to me about the 3553(a) factors now in your presentation and then I'll get the Government's full presentation as well?

MR. KAPLAN: So I can -- you want me to do everything, then?

THE COURT: Yes, please.

MR. KAPLAN: I was going to say good afternoon, but I think we're beyond that point.

So, Judge, clearly it is a difficult case, right? It's difficult because Mr. Sheltra went to trial; he was convicted. He hasn't admitted guilt, and my understanding is that he has no intention of doing that, which is his right.

I also think it's difficult because I'm assuming that the Court, in fashioning a sentence, is going to think of him as an untreated sex offender, which is a consideration, I suppose, in a case like this, someone who's not willing to obtain -- or isn't able to obtain counseling because they won't give it to him since he hasn't admitted.

And finally, I think the nature of the offense is

disturbing. If you ask most people about it, they would probably suggest, you know, you lock him up and throw the key away because it does have that visceral reaction for people. And I don't think any of us are immune to that.

But at the same time, I do think a 10-year mandatory minimum sentence is appropriate. And I base that on a number of factors which I think, individually and in combination, support a 10-year sentence.

One is I pointed out in my sentencing memorandum four cases in Vermont which I felt represented serious conduct on the part of the defendant and sort of compared that conduct with my client's conduct. I know that's risky because it can be interpreted on occasion as, like, trying to justify or excuse his behavior. That's not the intent at all. But I do think, and I'll make this point later, that if you're going to be fair -- I mean, not to suggest the Court's not going to be, but I think to be fair in this case, you not only need to look at the crime that he was convicted of but you need to look at the harm that he caused, because, you know, two people can be convicted of the same crime and one is far more egregious than someone else.

I also --

THE COURT: So let me talk to you about the harm he caused, because that is a difficult subject in this particular case where you have an undercover officer pretending to be a

woman who's got a minor child. It's less of an issue with ER, but ER's photos that she sent to Mr. Sheltra were not the kind of photos that we typically see in a child pornography case. They weren't child pornography. He asked for something far more explicit, but -- but this is a case in which Mr. Sheltra was not particularly successful in some of his endeavors. That doesn't mean that he wasn't doing everything he could to be successful.

But I was thinking about it in terms of if we have people who are driving while intoxicated and they have the same blood alcohol and the same measure of driving, one of those people may by chance kill somebody and the other person does not, and the same thing with distribution of drugs. One person may have death resulting and the other person does not. And we usually do punish somebody more seriously if there is an actual harm to somebody.

In this case there's kind of -- it's a split because we have a live minor victim.

MR. KAPLAN: So, Judge, it's interesting. I was actually going to make the same analogy, because when I was looking at this, I remember something Judge Kupersmith said to me, and I don't remember everything he's ever said, but a client was being sentenced for DUI with death resulting, and essentially what he said to my client was exactly what the Court just said: "You know, you didn't intend to go out and

kill someone, but you had the same level of alcohol in your system, but you didn't have good luck. You know, you went off the road and your friend died." And so he was -- so you do look at the harm that someone causes as opposed to someone else who may have caused less harm.

But with respect to these charges, I thought about that, and it occurs to me there's certainly a harm to society, and I think that might answer your question --

THE COURT: But there's also an intended harm. So unlike the drunk driver where he didn't go out intending to kill his friend, if I accept the jury's verdict, which I do, and I see the messages, there was intent to commit very serious acts.

MR. KAPLAN: But does a person who intends to commit a serious crime get the same sentence as someone who actually committed it? I mean, if someone attempted to shoot someone but missed them, does he get the same sentence as someone who actually shot someone and killed them? That's -- usually in most cases you don't end up with the same, but it's difficult to compare cases. So I agree. I think there clearly was a harm to society generally, if nothing else.

And the other thing I looked at was the federal sentencing guideline statistics, which talk about what an average sentence is. Just looking briefly, your Honor, at the cases that I mentioned, we've already had a discussion about my feeling that

it's important not only to look at the crime that someone's been convicted of but also to look at the harm that they've done or actually what it is that they actually did as opposed to the crime they've been convicted of.

I think the Nicholas Rodimon case is really a helpful case in determining what is an appropriate sentence. Nicholas was someone who was in his late 20s, early 30s. I don't remember. He had no criminal record. He paid a woman in Romania, a mother, and had her videotape her having sex with her young child. And he did that on several occasions over -- over several months. And his guideline was a level 39, which is the low end of 21 years. And in that case, I mean, he admitted guilt. He pled guilty. But in that case the Government agreed to 114 months.

So I draw a couple conclusions from that. One is clearly a life sentence is not appropriate in this kind of a case if Nicholas Rodimon -- if everyone agreed his sentence was a reasonable sentence at 114 months. I also think it supports a sentence of 10 years for the reasons that we just -- reasons based on the conversation we just had, which is in Count 1, there wasn't any harm that was done to anyone other than to society. There was an intended harm, but it didn't occur.

Count 2, obviously, as the Court's indicated, that's more problematic, but what that involved was the allegation that my client asked for certain pictures, which he didn't receive, and

there was an --

THE COURT: Is that not Count 3?

MR. KAPLAN: Well, Count 3 was where he asked for pictures. That's right.

THE COURT: Yup.

MR. KAPLAN: But I think Count 2, there was an allegation that he actually touched this young woman, 15-year-old girl, above her clothing on one occasion, and I wouldn't begin to minimize that, and I wouldn't begin to suggest that wouldn't have a long-term effect on a young person. But does it compare to what Nicholas Rodimon did? I don't think so. And maybe it's not reasonable to compare harm like that, but I do think -- I think the Court should spend some time thinking about the actual harm that was done by Mr. Sheltra.

The Brian Folks case is another one. Brian was convicted of a 10-year mandatory minimum in a drug conspiracy and convicted of numerous sex trafficking charges. There was some very graphic testimony about a sexual assault that occurred, about physical and mental abuse with a number of young women over a three- or four-year period. He had a criminal record. He had served 14 years for manslaughter, and his -- and he went to trial, hasn't admitted guilt, and his sentence was 22 years. So I use that as an example to sort of point out why, at least in the District of Vermont, I think a 10-year -- a life

sentence that the guideline recommends is not appropriate. And again, looking at the harm, seems to me that a 10-year sentence in this case in comparison is not an unreasonable approach.

I also suggested that it would be appropriate to look at the federal sentencing guideline statistics, and just to make a long story short, those suggest to me that the average sentence in these cases, sexual abuse cases, is between 15 and 16.7 years, and for people who are in a criminal history category I, it's, you know, between 15 and 16 years. It wasn't a huge sample. It was, like, over 800 individuals, I guess, whose cases they looked at. But I think you can draw certain conclusions from that. If the average sentence is 15 to 16 years, you have to assume there are some people whose activities that they were convicted of were more serious than what my client did and maybe some that were just as serious or less serious. But I would assume it ran the gamut.

And the question that I have is: Why is Mr. Sheltra's guideline so high compared to the average guideline, the average sentence? And what I have concluded is it's that eight-level enhancement under 2G1.3(a)(3). If you take away that eight-level enhancement -- he was at a level 43. You take away eight levels for that enhancement, now he's at a level 35, criminal history category I, and all of a sudden his low end of the guideline is 14 years.

So that's why when I was talking to the Court earlier

about, well, it may be the guideline is accurate as applied, but when you start looking at the 3553(a) factors, maybe that's one consideration the Court might look at and say, "I don't think it's appropriate to increase his guideline by eight." I mean, that's a huge increase. I don't understand the rationale for such a large increase.

It occurs to me that there very well could be someone who was convicted in that 15-to-16-year range who maybe the victim in their cases were 12 years old and there's others whose victims were 11-1/2 years old and the difference between the two would be an eight-year *[sic]* enhancement. And it seems to me that that's just not reasonable. And particularly in a case like this where -- I guess we're getting back to what the intended harm was.

The only reason the alleged victim in this case was nine years old is because that's what the undercover agent said. If the undercover agent had said she was 12, then he wouldn't be getting that eight-level enhancement. And if my client was interested -- well, I'm not going to -- I'm just saying it seems particularly unfair in this case since there really wasn't a 9-year-old, and I know the Court's thinking about -- well, I'm not suggesting what the Court's thinking about, but someone might think about the fact that he still intended to do it.

THE COURT: Knowing she was nine.

MR. KAPLAN: Yes. But, you know, if the Court starts looking at the 3553(a) factors and takes away that eight levels, all of a sudden we're down to what the average sentence is, even a little bit below it. So if you look at Nicholas Rodimon at 11 years and the average at 15 to 16 years and if you take away the eight-level enhancement, now we're at 14 years. You're looking at a sentence someplace, I think, between 11 and 15 years, which would be far more reasonable than the life sentence that -- particularly given my client's age. You know, he's going to be 60 in the spring. If he gets a 15-year sentence, he'll be in -- most likely in his early 70s before he's released. So it seems to me that taking a look at the average sentence in these cases should be a helpful starting point.

I'm assuming that the issues that the Court's concerned about in terms of sentence is punishment and maybe protecting the public in a case like this where the defendant hasn't admitted guilt. I don't think -- I don't think a sentence of 10 years is a short sentence. I don't think it's a slap on the wrist for someone my client's age who's never been in jail before and all of a sudden has been in jail now for over three years. He's been punished in a number of different ways. He's lost everything. He had a wonderful reputation. He had a house. He had a car. He had a bank account. Everything's gone. He has nothing left in that respect. He's also lost the

respect of people that have known him.

When he's released eventually, if he makes it through, he's going to essentially be -- I assume his daughter may help him, but he'll have nothing. I think that's all a significant punishment.

And in terms of protecting the public, when he gets out, he's going to be on supervised release, I assume for quite a while, and Probation's going to have a lot of control over what he does or doesn't do. I think Probation has the ability to protect the public from anything that my client might think about doing, if he's still so inclined to do that, and so I think a 10-year sentence does provide -- keeps him off the street for 10 years, and then a long time on supervised release also protects the public.

And I think if you use 14 or 15 years as the starting point, it should be reduced a little bit by his history. I mean, he worked for over 30 years for IBM. He was a supervisor. He was extremely well respected by the people that worked with him. He was very successful. He made a good living. And so I think it's appropriate to give him some consideration because of that.

Thank you, Judge.

THE COURT: All right. Thank you.

Mr. Sheltra, do you want to make a statement on your own behalf?

THE DEFENDANT: I certainly support what Mr. Kaplan said, and I appreciate all the work he went through to do the behind-the-scenes analysis of similar cases and all that. That was a very extensive endeavor on his part.

And I would like to thank the Court when my other attorney had to -- had a conflict of interest. I would like to thank the judge for appointing Mr. Kaplan. It took a couple years to go over before I could actually get the evidence that was -- that I sought that seemed more relevant than anything else in this case in front of him, and it definitely made the difference for me.

This has been a very challenging time throughout this whole thing. As I said in the letter that turned into a motion on August 10th of 2020, your Honor, that turned into that motion that we had, my actions have been gravely misunderstood, and that is still the case.

I understand the -- what I've been convicted of, but that was not my intent. This has been a long, challenging time for me with Mr. Kaplan because there were so many months in that time frame, just about two and a half years, actually, before I could talk to him about what I was trying to convey to him, and that makes it very difficult, especially in these circumstances.

The sensitivity of this information is such that I can't build a case where I am. I can't sit and look over my

materials. It would result in -- my life would be -- is in danger every day because of my charges, and so there's just no way to have that material on hand, and so that in itself has been extremely difficult, and so Mr. Kaplan has been able to sort through that, and the first time that he said, "I see now, I don't think you're guilty," that was -- that was the most relieving point in my life, in reality, and that happened in October of this past -- this past year, just when we were starting the whole trial thing, and I had somebody who finally read the material enough to understand that you can commit things via email.

And the thing that -- I don't want to go back and -- I've been convicted, so I understand, and I'm not trying to waste your time, your Honor, but the fact that I did not solicit anything from an undercover person, this was information that I received from someone else that I was reacting to, and I understand that that doesn't make it right, and it doesn't make it right, but when you combine that with me asking if they're undercover, the other side of this whole thing is, yes, I understand the prosecution's jumping on that and saying, "Well, yeah, he just wanted to make sure he could get away with something because he wanted to know if this was a law enforcement individual that he was talking to."

I have 23 years of management experience where I'm dealing with interactions with people all the time, your Honor, and so

when I asked that question, if they were undercover, then it allowed me to understand that, no, this is a troubled person. This is somebody who's react- -- who is presenting me with information or with an opportunity, and they're sincere about it, and I truly believed that if you asked someone that was undercover, I thought they had to tell you that. That's a naive thing, but I had never been in trouble.

So there are a couple things that are stupid like that, but if I was able to put everything into a chronology and look through my own computer records with -- with an attorney, we would have had a different case, and we just weren't able to do that. Everything that we had for evidence was presented by the prosecution, and so it was very reactionary and was never proactive, because everything about my philosophy in this situation changed when that information was presented to me, and if -- no one can sit and listen to somebody who is offering their child up for sexual activity and not -- not have some reaction, dramatic reaction, to that, and so that's where everything came from with the two charges.

I don't know anything about what happened other than -- with my niece 35 years ago or whenever it was, but I do know the state police came to my house and we had an interaction and I gave them input, and it basically went away from there, okay? So that aside, talking about the charges that are -- that I was accused of and that were deliberated on by the jury, those

cases, this -- this plays a key role in that.

And so to wrap this up, which Mr. Kaplan likes me to do, is that the -- what I've been convicted of was not my intent, and it's the same thing that I said to you in that letter from August 10th, your Honor. My actions have been gravely misunderstood, and I know the things that I did, and when I was just listening to Mr. Kaplan talk about the person from Plattsburgh that we were interacting with, nobody wants to talk about the fact that, well, she had volunteered the information, and I was trying to understand. I was -- I was on an information mission, and -- because that's just my personality. If I don't know something about something, I want to go find out about it.

And I could have done things a whole lot different. I regret the way that things happened. I sincerely regret the fact that I mistook Treena and -- but that -- my stroke does come into play with that, because as I read -- I read all the time in my cell, your Honor, and I am struggling with that, and it's going to be, I guess, that way for the rest of my life. Because if I imagine something or if I -- something else pops into my head, that's the word I see, and that's where the Treena thing came from, and the fact that ER was talking about anal, that was -- it was on my mind with -- about Treena, and that's where it went, and I understand that there's a discrepancy there, but the theme is the same. The theme was,

you know, a sexual theme, and so that was something that Treena and I had -- were engaging in on a regular basis, and it just came into play that way.

But thank you very much for appointing Mr. Kaplan. This has been a very long and tenuous process, and I wouldn't wish it on anyone with the circumstances that I'm in in this environment. But he has made the best of it. Especially in the last 6, 8, 10 months, 12 months, we've worked together extremely well. I really appreciate that. As I said, the things that I'm convicted of, that was not my intent.

THE COURT: All right. Thank you.

THE DEFENDANT: If I could just --

THE COURT: Go ahead.

THE DEFENDANT: -- add, I know that because I am not -- I have an issue with that my only two options are to lie to you and say that I'm guilty of these things, because that was not my intent, and receive the treatment that would allow me to have a better -- a better recovery from this nightmare or tell you the truth and feel the brunt of everything, the wrath of justice that is under -- you know, is now on me because I'm not lying to you. Do you understand what I'm saying?

THE COURT: I do understand.

THE DEFENDANT: If I were to say -- I mean, I could have came and said, "Hey, I really screwed up, I'm guilty as hell and I'm terribly sorry for it." But that would have

been -- that would have been perjury, and I would not do that, your Honor.

THE COURT: Okay. Thank you.

Let's hear from the prosecutor.

MS. MASTERSON: Thank you, your Honor.

To begin, your Honor, it's startling to hear what Mr. Sheltra had to say, because he obstructed justice again. He's holding on to the lie about Treena; he characterized the undercover as being the aggressor, she was saying things and he was responding; he was on an information mission. That's not true.

The Court heard all the communications between the undercover and Mr. Sheltra. The undercover was very restrained in her actions. "What do you mean? Tell me about this." It started with her saying, "I have a 10-year-old daughter. Maybe we have something in common." And he took it right down the information superhighway to talking about sex with her child. So that's Mr. Sheltra again.

And he asked when somebody's offering up their child for sex, somebody's going to have a reaction. I personally would call the police. He engaged in aggressive sexual chatter with that mother about sex with a child because that's where his interests lay.

His actions he says were gravely misconstrued. Mr. Sheltra got due process. He got a trial. He got to pick his

jury. He got all the Government's discovery. He had extremely competent counsel, a fair judge, fair prosecutors, and the jury that listened to every word and hung in there even during our COVID vacation, and he got the verdict that the evidence supported. So this is a continuation -- his comments are a continuation of the misrepresentations that he has engaged in for a good long time.

I want to start my comments by talking -- responding to the Court's specific inquiries. With respect to Victim 1, we agree that the way that the Court has proposed addressing her disclosures in the PSR is appropriate. We talked to her and asked her if she wanted to come in to testify to provide the Court with live testimony and subject to cross-examination, and she declined and said, "It wouldn't be good for me," and we said fine, we'll go without it, which is why we withdrew that in support of the five-level enhancement under 4B1.5 and chose -- in filing her written statement, we didn't file it in support of the PSR. We narrowed the Court's -- or asked the Court to consider what she wrote in connection with Mr. Sheltra's history and characteristics. That is the nature of the offer and why we are comfortable about having her here. So I think the way the Court has resolved to address all these issues is appropriate.

With respect to the computer enhancement, we -- you and I have had quite a long discussion over the years about child

pornography cases, and I understand the Court's thinking, and I appreciate that the Court has drawn a very clear and purposeful distinction when it applies. There's a difference, I recognize, between a person who's sitting at home and downloading child pornography through a peer-to-peer network, because that's generally how those people get it, but Mr. Sheltra's conduct was way different than that. He was actively trolling for people on the Internet. He launched a number of Craigslist posts, and then he used the Internet to continue communicating with those victims, and we've got three that he was communicating with.

THE COURT: What about Mr. Kaplan's point of, well, why is it worse to do that online than in person?

MS. MASTERSON: Because you can lie about who you are. You don't get Randy Sheltra, bald 57 -- or now 59-year-old man. I mean, yes, he did -- would send a picture every so often, along with pictures of his penis, but he could maintain a level of anonymity and a level of aggression that you can -- you can continue to pursue when there's nobody there startling -- being startled, being offended, or anything, you're just doing it by yourself and nobody knows who you are.

And it's that level of anonymity, that level of easy accessibility to the conduct that makes the use of a computer particularly insidious. Because when is he going to have an opportunity? How is it going to come up when you can start

talking to somebody about having sex with her 10-year-old daughter? That doesn't come up, at least in my experience, in ordinary conversation. But you can find that communication when you're looking for it, and we know that's exactly what Mr. Sheltra did.

And so that's why I think that the use of the computer enhancement is appropriate in light of the Court's comments, particularly when we realize that at the end of his sur cross at trial, the last questions that I asked him were, "So you engaged in sex talks with the undercover about her 10-year-old daughter?" He admitted to that. He admitted to talking to Alisha with an A about sex with her 9-year-old daughter, admitted that, and then pointed out, which I was surprised with, that he engaged in sex talk with the person in Plattsburgh that he was bragging to about the communication with the 15-year-old that he wanted -- he was involved in sexual chatter with her about sex with a child as well. He found three people. His use of the computer was -- there was no good associated with that activity. It was all bad. And so -- and he made -- the computer enabled him to do that with abandon, so we agree that the computer enhancement needs to apply.

With respect to obstruction, the Court sees the Treena exchange the way that we do, that -- I mean, let's go to the law on the obstruction enhancement. It has to be -- sorry.

I've got good notes. Let me get it.

THE COURT: It has to be willful --

MS. MASTERSON: Material.

THE COURT: -- material, commit perjury, which is the intentionally giving of false testimony as to a material matter.

MS. MASTERSON: Yes. The Court has it. And that is exactly what his statement with respect to the anal sex trigger with -- or the testimony that he was triggered by the 15-year-old's reference to anal sex with her boyfriend, because we know that the actual communication where he first asked the 15-year-old happened 90 minutes before that triggering event that he very carefully assented to during cross-examination. That was not true because it was objectively discounted by the raw fact of the time difference, that the triggering event happened after his first request.

So it was willful to try to avoid the implications of having made that request; it was false because it was -- it was discounted by what was written on the text; and it absolutely was material, because if the jury had believed that Mr. Sheltra thought he was asking somebody different for pictures of her genitalia, he would have been acquitted on Count 3. So this was absolutely material to the jury's decision-making because, if believed, he would have been acquitted of Count 2.

Similarly, and this came up when I was studying the

defense's sentencing memo -- I'm sorry. At the beginning of the hearing, I didn't hear that the Court had -- when it went through all of the materials that it has reviewed, I assume the Court has read our paperwork as well.

THE COURT: Oh, yes.

MS. MASTERSON: Okay. It just -- that wasn't in the list.

THE COURT: Oh, I thought I said I had reviewed your sentencing memoranda, but if I didn't, I have.

MS. MASTERSON: Of course. I figured that. But when I was reviewing the defense, another material lie came up, because Mr. Sheltra claimed that he did not meet with the 15-year-old for sex in the car when he drove the day after they met. The Court obviously remembers that he bragged about meeting with the 15-year-old in the emails to Person 1. The 15-year-old provided a statement that's in the PSR that describes what actually happened, which refers to touching. In the defense sentencing memorandum, they admit it, that he touched her in -- when they were in the car together.

At trial, in response to the question from Mr. Kaplan, when they're talking about his communications with the 15-year-old, Mr. Kaplan said, "Okay. Did you actually" -- and this is on page 427 of the trial testimony that was given on November 11th *[sic]*.

"Okay. Did you actually -- when you met, did you actually

have physical contact with her?

"I just met her in my car. We -- I never touched her."

That was false. If believed -- so that was false. It was willfully given while he's at trial trying to save himself, and it absolutely was material as well because, if believed, then that would have bolstered his other testimony that he didn't have a sexual interest in children because he's testifying "I had the opportunity with the 15-year-old and I never touched her," and that was a lie.

If it had been believed by the jury, it would have been material and it could have led to an acquittal on either Count 1 or Count 2 because it would have bolstered the overall representation that he didn't have a sexual interest in children.

So with respect to the obstruction-of-justice enhancement, we have two specific lies that were willful -- willful and material and false. So -- and that is in addition to the larger ones that we've talked about where he falsely testified that he didn't have a sexual interest in children. I would suggest that the safer way to -- if the Court is going to find that an obstruction-of-justice enhancement applies, then the better way is to link it to either or both, preferably both, of these material false statements, so I assume that a court will later review it and the court will know exactly what it is that the Court found, but there was obstruction. No question about

it. I think I've answered -- addressed the Court's questions.

All right. If I may, I have thoughts on other matters before the Court that were raised by counsel.

To begin, Mr. Kaplan mentioned the four other cases. I submit to the Court that the only one that has any potential relevance is the Nicholas Rodimon case, which, conveniently, the three of us handled together. In that case, the Court will recall -- I mean, because, you know, Folks, Monroe, and Caraballo all were dealing with drug offenses, violent crimes, and adult victims, not children. Rodimon had a child victim, and so that's where he has relevance in this case, because we're dealing with that genre of crime against -- or crime, not the drug-motivated. It has a completely different mind-set.

But Mr. Rodimon, I mean, as the Court knows, he pleaded guilty, so he got acceptance of responsibility. He didn't provide any false testimony. He got the same sentence that the woman got in Romania. This was recommended to the Court, and the Court agreed. And the Court will recall that Mr. Rodimon thought that he was in an emotional relationship with that woman, and she was involved in a money-making venture. He thought that there was something going on. And so there was a much different confluence of factors that led the Government to believe that this was a more -- that this would be an appropriate resolution. Counsel agreed, and obviously the Court agreed.

The difference here is Mr. Sheltra, he went to trial; he provided false testimony; he continues to deny his guilt. And the sentence that counsel is asking for is a mere 6 months greater than what Mr. Rodimon got under wildly different circumstances. We submit to the Court that this -- that it's apples and oranges in trying to equate how Mr. Sheltra presents to the Court and what -- how Nicholas Rodimon presented to the Court.

Talking about the actual and intended harm that were caused by the defendant, we dis- -- we agree that there was harm to society by his conduct. And with respect to whether there was an actual victim in Count 1, thank God there wasn't, but he showed up to have sex with who he thought and hoped was a 10-year-old and her daughter *[sic]*, okay? So but for the grace of God, he's now a child physical rapist. And let's not forget as well that in his quest to have sex with Maddie, the daughter of Momma.mego, or Meg, they came together because he was looking for Alisha, the mother of a 9-year-old, and the Court will recall his testimony when Mr. Sheltra testified that he wasn't going to let Meg go. He wasn't going to make the same mistakes that he made with Alisha because Alisha with an A left and he was -- still a year later, he was still desperate to get together and make it all happen.

So now we've got two little, tiny girls, 9 and 10 years old, that he is desperate to have sex with, all right? So, you

know, but for the grace of God, that didn't happen.

And also, let's not forget that he was communicating with the Plattsburgh woman about sex with a child. So now we've got three.

So there is no actual harm, but there's plenty of intended harm. And let's not forget the fact -- so he's talking to these three people. One we know is an undercover. So she's not going to be swayed by him. When he's trying to normalize this conduct, she's going to realize that this is crazy talk. But he's normalizing that behavior, that deviant sexual behavior, and making it okay for at least two other people that we know of: Plattsburgh lady and Alisha with an A.

So that's how this conduct happens is people get on the Internet and they find their support group, they find their tribe. He found three other people to talk to about sex with kids. They find each other, and then they work and they talk and they make it okay for each other to commit these crimes. And so that is a particularly insidious harm caused by Mr. Sheltra's conduct, because he's normalizing it, and now people on the receiving end of that communication think, oh, good, we've got a friend over here, and they will talk to other people, continue to normalize it, because now they've been bolstered, or they might act on it, and we don't know. So that's another horrible harm that was caused by Mr. Sheltra.

As to Count 2, that was a real kid. He absolutely hurt

her. He admitted in his sentencing memo that he did meet her and touch her, though it was over the clothes. Well, we know what happened based on what was written in the email to Plattsburgh lady and in ER's statement. But let's remember how the 15-year-old presented. In the very first email, she responds to Mr. Sheltra's Craigslist post that said "Older Man Seeking Younger Woman." She announces that she's into, like, puppies or something like that and has a very high libido. That's a gold mine for Mr. Sheltra.

Some people might think that a child who presents at 15 and announces she has a very high libido, that she's troubled, there's something going on that is horrible with this child that she is talking with men on the Internet about sex and suggesting that they get together at midnight. But that's not how Mr. Sheltra responded. He was ready to jump in his car and drive an hour and a half to Orange to meet with her for sexual activity.

And then -- so -- and then he did meet with her the next day. And remember how concerned he was: "Is your dad going to be around?" He had asked her, "Are you a cop?" And she's like, "No, I'm a kid," because she was, and then he's like, "Who's going to be home? Is there a place where we can meet? I don't want anybody to find us." His intentions were obvious when he went there, and then he acted on them. He did go. He did meet with her.

And even though he testified falsely at trial that he didn't touch her, he did. That's absolutely true. And what does that do to a 15-year-old kid that a 55-year-old man is willing to jump in the car and meet her for sexual activity? And she had a boyfriend also, so that's kind of an uncool part of it. But still, he jumps in the car and makes his way over there to sexually assault her. He didn't rape her. We don't believe that he raped her based on the disclosures that were made. But he still did that, and it's a gross overstep.

And, you know, I said in my closing argument she didn't need a boyfriend. She didn't need a lover. She needed a grown-up. And Randy Sheltra was none of that. He was a sexual predator taking advantage of a vulnerable person. And he even -- I asked him on cross, "So when you showed up for sex -- sexual activity with her, was that part of the mentoring and comfort that you were going to provide to this troubled child?" And he kind of hemmed and hawed, but, I mean, there's no escaping that the reason why he was engaged in these conversations, he didn't care about her. He just wanted to have had her sexually. That's the truth about Randy Sheltra. And that's the harm that he caused to her is that he was more than happy and willing to use her like that.

Similarly, the Count 3, even asking the questions to the child "Will you send me a picture of your pussy lips," "I want to see a picture of your labia," he's asking -- first off, he's

victimizing her, right, by even asking her to send to him these intimate photos; he's asking her to sexually exploit herself to him, this random guy that she met on the Internet; and she's -- and he's teaching her by that that she's just a sex object. I mean, to him she clearly was. That's all -- that's how they started and finished the relationship. And asking her those -- there's only one part of her body that he really cared about from her, and that was her labia because that was his thing, and those were the requests that he asked.

And so the damage to her psyche by having that sort of aggressive, dehumanizing activity by this person who testified that he cared, but we know that was more falsehood, is -- it's upsetting.

And there was also -- when he asked her for these pictures, there was no representation "And I won't give them to anybody." We know that he was more than happy to brag about his conquest with her to people because he was bragging about her to the person in Plattsburgh. So if he was able to get her to exploit herself and he gets these images, what's he going to do with them? He's certainly going to tell Plattsburgh lady that he got these images: This 15-year-old hot little kid sent me these things. He wanted it to masturbate to it. That's what he wanted. She was just a sex object. And that dehumanizing for a child in that circumstance is damaging.

In the defense paper, their sentencing memo, they object

and ask for a sentence that's not a *de facto* life sentence because of Mr. Sheltra's age because he'll turn 60 next March, and we submit to the Court that the only relevance of Mr. Sheltra's age is what -- how does it relate to the degree of danger that he will pose when he gets released. He poses the same danger now that he did at the time of his arrest, because he's still not being truthful about his conduct; he has no insight into what he did; he has no remorse whatsoever. He's still talking about how the undercover was the aggressor, which we know is nonsense. He has no remorse, completely unrepentant, and his sexual interest in children is obvious. That's where his danger is so keen and acute.

And there was one moment in the trial that the Court probably remembers where it just -- it came out, because he's testifying, "Oh, I don't have this interest in children and, you know, I was there to counsel the 15-year-old" and that sort of thing, but when I was asking him to go through the emails that he sent to Plattsburgh lady, you know, and I broke it up individually and is this true, is this true, is this true, and we got to the part where on the second email, he confirmed that he wrote, "She's got an amazing little body."

And I said that "You wrote that and that was true, right?" And he said, "Yeah," and added, on his own, "She was adorable." That was amazing, because he couldn't keep it in. It came out no matter what. He's testifying as a defendant while in

custody in a federal criminal trial, and that was the most truthful thing he said in his testimony, because his sexual interest, he couldn't even contain it at the moment when the jury probably didn't need to hear that under these circumstances he still thought she was adorable. And that exchange, in the Government's view, defines who Mr. Sheltra is. It really -- that's really all we need to know about Mr. Sheltra is that answer. And that defines and exposes him for the risk that he presents.

So we submit that the Court needs to -- and I know the Court will, in fashioning the appropriate sentence, needs to factor in that this is who he is, and he's not going to change. And his age is not relevant to whether he's going to age out of this conduct. The Court knows certainly that these are not -- people don't age out of having a sexual interest in children. It persists because it's not really sex. I mean, it is -- it is married with a sex act and a sexual release, but this is power, control, domination, and the special one that Mr. Sheltra added was manipulation, because he worked so hard to groom his victims.

I mean, he was working Momma.mego, the undercover, and telling her, like, things to do and "It's all going to be fine" and "Don't worry; she's going to -- we'll get Maddie to orgasm, and I Googled whether a 10-year-old can reach orgasm, and she'll do it so it's going to be pleasurable." So he's -- he's

manipulating. This isn't going to go away.

And another -- and a big problem with this is he's not interested in getting treatment. He won't be receptive to treatment because he's still denying that it all exists. That's the problem. Mr. Kaplan pointed out, you know, untreated sex offender. That's exactly what he is, and as he presents right now, including what he just told the Court, he's not going to change, and that is scary, because the risk that he poses is horrible.

We already have him doing the offense conduct that he was convicted of. That has got to be something that -- that factors in not because, oh, poor guy doesn't have a lot to live. No, he's got plenty of time to live, but what's he going to do and where is he going to be for the rest of his life, and how can we address -- how can the Court address the risk that he poses and keep the community safe? That's the question. Because his age doesn't do anything -- or the Government submits that it shouldn't be any reason for mitigation because he just poses that risk.

With respect to the guideline statistics, there are so many holes and unanswered questions with respect to that. The attachments that Mr. Kaplan brought forth, they -- we don't really get much help with that because there's no information in those raw statistics about, you know, what was the offense conduct; did the person go to trial; did they commit perjury;

were there multiple victims; what were the charges? It just says child pornography. Was it possession? Receipt? Distribution? Production? Any mandatory minimums?

I mean, there are so many unknowns that -- I appreciate that they came forward, and, you know, frankly, 15 to 16-1/2 years, that's about -- or the Government's recommendation is a sentence of at least 200 months, which is about in the middle, but, you know, the more I've been thinking about it, the more I think that that might be low, particularly after the comments that he made today which solidify, in the Government's view, that Mr. Sheltra is not going to take any steps -- not capable of taking any steps to change his ways.

With respect to the objections that the defense raised to the presentence report, first off, they objected to any fact that suggested he's guilty. Well, that's a problem, because the jury found beyond a reasonable doubt that everything -- that he committed these crimes, so they pretty much come in. And moreover, the Court was there when I cross-examined him, and he agreed to just about everything except whether he had the specific intent, so it's inappropriate, I think, to launch a blanket objection like that when his client admitted to 90 percent of it, probably 95 percent of it. And the 5 percent that he didn't agree to the jury rejected in its verdict and in finding him guilty, it rejected the Treena story, and it rejected the lie that he never touched the 15-year-old.

I've already addressed the obstruction enhancement and also the issues with the niece, so I'll move on to the 3553(a) factors.

As to the offense conduct and the seriousness of the offense, I mean, the Court knows it is absolutely horrible conduct. I mean, the man showed up to have sex with a 10-year-old, and then we found out that he had had sexual activity with a 15-year-old that he met on the Internet. This is danger -- and was asking her for child pornography. This is horrible, horrible victimization of children and manipulation of the -- of both of them.

I mean, in my closing argument, I detailed exhaustively and probably a little too much the grooming process that he engaged in in all of the -- in his communications. I mean, it was like a textbook example of how to groom somebody, you know, kind of teasing a little bit and make sure that the person isn't -- isn't a cop and, you know, it's going to be okay; I mean, what I've just mentioned about, you know, Googling "orgasm" to tell Momma.mego that her daughter's rape would be potentially pleasurable if she could achieve orgasm under those circumstances. I mean, this is dangerous behavior and horrible behavior.

Mr. Sheltra's history and characteristics. You know, it's interesting. He makes a point of articulating that he was a good employee with a good work history, 30 years, well

respected. Well, I have to wonder how it is that IBM and GlobalFoundries would have responded if they knew, and the Court will recall this testimony, that a lot of the communications that he wrote with the undercover, he did it while he was at work. So he's talking to somebody about sex with a 10-year-old while he's at work? I imagine that he would not have been an employee at those places if they knew the truth about him. The truth was revealed when he was arrested and through the course of this proceeding, but it's a big question as to whether that is actually -- if they had known the truth about him, would he be well respected.

As to the punishment, look, he altered the course of the 15-year-old's life. He altered the course of the lives of the other people that he communicated with. Particularly, though, I'll focus in on the 15-year-old. I mean, when he is having these chats and victimizing her and asking her to exploit herself and manipulating her and he manipulated the undercover - thankfully she was an undercover, not a real mother - I mean, this is bad stuff, and then to show up to have sex with a 10-year-old? He needs to be punished for what he did to the 15-year-old and what he would have done but for the fact that it was an undercover. This is outrageous conduct and deserving of a significant sentence.

Again, as to protecting the public, I've already mentioned that he is untreated, unrepentant, unremorseful child sex

predator, and it's not a question of if he will reoffend. It's when. Because he's not capable of accepting any treatment, assuming the treatment even works. But he's -- the public is at great risk of him, and he doesn't appear interested or willing to accept the truth about who he is and then take steps to try and mitigate the harm that he presents.

Mr. Sheltra asked the Court to say, well, no, give him 10 years and it's okay because he'll be on supervised release. Well, that is -- that's a horrible suggestion because he's not the only person that the Probation Office will supervise, and they have -- you know, they're outstanding in the Probation Department, but he's not the only one, and these guys reoffend constantly. I mean, the Court and counsel, we're all well aware that these guys come back, they find a phone, and then they get arrested with a phone, and then we find bad things on it.

It is -- it's just then a question of time, because if it's easy -- on these things it's not like we can drug test him and find out if he is, you know, using drugs or whatever. There is the polygraph that is a tool that's used in connection with sex offender treatment, but these guys violate, and even if he is out, though, and appears to be not violating, it's hard to know if he is or is not. And if he is, the problem is the danger that will happen if he does violate.

The issue of deterrence is one that is a big one, I think,

in this case, general and specific. I mean, general because you don't get to show up to have sex with a 10-year-old and get away with it, that there's going to be a significant punishment handed down for that sort of behavior. You don't get to meet with a 15-year-old when you're 40 years older than she is. So there has to be the general deterrence.

And specific deterrence, obviously we need to make sure that Mr. Sheltra doesn't do it again. And I submit to the Court that giving a sentence of 120 months, a 10-year sentence, is not -- would not provide adequate deterrence, because it would not capture the other bad conduct that he did and the way that it presented, because he committed perjury, he obstructed justice, he doesn't get acceptance of responsibility, so then there's no incentive to go -- to plead out if you can go to trial and lie and then you still get the mandatory minimum. There has to be a consequence for these other factors that -- that are presented by Mr. Sheltra.

Also, there has to be a factor -- an acknowledgment that he got a five-level enhancement for being a repeat and dangerous sex offender because of what he did with the two discrete, separate enticement activities that he engaged in. This is -- there has to be accountability for all of this conduct to deter him and to ensure that others who might think that "This is not such a bad deal. I can do 10 years because I'll get to have sex with a 10-year-old," we need to make sure

that they know, no, anybody who thinks that this is a good idea, you're going to have a hefty consequence that you're going to have to pay.

Making another sentencing factor is the need for rehab or treatment. He's not interested in it. He's not there. If he's continuing to lie today, that he didn't have -- that everything was misconstrued and he doesn't have a sexual interest in children, sex offender treatment is not going to happen. He won't take it or it will just be wah, wah, wah.

Sorry.

It's -- it will just be gibberish to talk to him, because he's not there. You have to have some understanding to go into treatment successfully, and the Court knows. You have to be willing to expose yourself and be challenged by what's being presented to you, but you have to admit certain fundamental truths about yourself, and a fundamental truth about Randy Sheltra is that he has a sexual interest in children that is persistent. It has lasted for a very long time. According to Victim 1, it started when he was a teenager. It's existed his entire life, and now he's sitting in jail because of that.

That is what he has to do for effective treatment to happen, and instead Mr. Sheltra's saying it was all a giant misunderstanding.

So yes, he absolutely needs treatment, but I don't know that it would have any good if he is in a mind-set where he can

take advantage of it, and so then we will be back to the place where, again, untreated, unrepentant sex offender let loose, and his risk of harming the community would remain.

THE COURT: Let me ask you one issue that is not on this topic, but I just remembered that I forgot to ask you. Mr. Sheltra says that the facts in paragraph 29 are not accurate in that he was in fact investigated by the police. Now, that may not be inconsistent with she ultimately did not go through with her complaint due to backlash she faced from her family, but what about his allegation and his counsel's allegation, which we haven't seen evidence for, that there was a police investigation? What, if anything, do you know about that?

MS. MASTERSON: Well, I looked to the victim impact statement that we filed with the Court from Victim 1, and in it she wrote, "I was not able to trust anyone, especially family. I was completely rejected by the entire family once I filed a police report in the summer of 1989." And then she wrote near the end, "When my uncle was arrested, I knew I had to come forward and try to make sure he would never be able to victimize another young female. Was it hard? Yes. It was extremely hard and entirely scary, but I knew I had to do the humane thing and correct what I had not been able to accomplish back in 1989." And now she went on to say that she's been rejected by the family members.

So I believe she did go to the police. My understanding based on our conversations with her was that she got bad family -- no family support, was essentially ostracized, and I believe that she withdrew the report, though if I may peek in the back. The agent is nodding yes, so I believe that that's what happened. So he may have been questioned. I don't know. But I do believe that there was a police report and it did not --

THE COURT: Okay. So from your perspective, and I assume that's what the probation officer was relying on, it is accurate that she reported it to the police and that she did not go through with it?

MS. MASTERSON: That I believe is correct.

THE COURT: Okay.

MS. MASTERSON: I have just a couple more comments, your Honor. I feel like I've gone on a long time.

With respect to the unfair and allegedly arbitrary Sentencing Guidelines, I -- counsel argued that eight levels because the minor was under 12 is unfair and it appears to be arbitrary. You know, I would actually think about this one more if our victim in this case was 11-1/2 and there was a shading on that. Our victim was 10, all right? Eight levels up is fine for an individual who shows up. That's not arbitrary. That is a clean break. If you're going to have a 10-year-old, that's -- that is different. She wasn't 11-1/2.

There's -- it's not like, well, why, it's only 6 months because -- you know, I should get four because it was so close. No. She's two years away from the next level. Eight months *[sic]* is fine.

And why is five levels, is that something that's fine for the repeat and dangerous sex offender? Common sense answers that one, your Honor. We have two discrete instances that he was convicted of where he was a sexual predator of children, one 10, one 15. Five levels for that repeated behavior is -- is entirely reasonable.

With respect to the sentence, as we stand -- as I stand here before the Court, Mr. Sheltra is, as I've said before and I just need to say it again, unrepentant, without remorse, without insight, not interested or amenable to treatment. He denies everything, even today. He lied under oath. He showed up for sex with a 10-year-old. He met for sex with a 15-year-old. He chased obsessively after the mother of a 9-year-old so that he could have sex with that 9-year-old, and that obsession lasted a year. He was trolling another person, the Plattsburgh person, for sex with a minor that he told us about.

The risk of harm presented by this individual to the community is off the charts. All of the Section 3553(a) factors insist on a significant sentence. The most important one, as I've made clear, is the risk of future harm that he

presents. The only way to keep the community safe from Mr. Sheltra, because he's not going to get any better, is incarceration. It's why the guidelines have set life as where he ought to be.

There are no mitigators here. The only mitigator that was advanced is that he was a good worker, but I've got to question that given that he was texting with a mother about sex with her 10-year-old while he was on the job. But there's no other mitigators that are here, just it's a really long time. And we agree, it's a really long time. But we don't see any reason that has been presented to deviate or vary from the guideline level of life.

But we recognize that it's life, right, and it is a significant sentence, and other courts may or may not. We're in Vermont, where our court, your Honor, doesn't just follow the guidelines blindly and say that's it, that's the way it's got to be. And frankly, that's one of the blessings about being in Vermont, for the Government and for Mr. Sheltra, where I know the Court is thinking about this, which is why we offered an alternative where we think that given the totality of the circumstances, the offense conduct, the perjury, the multiple victims, that a sentence of at least 200 months -- though I'm going to up that. I think 220.

After what happened today, he is nowhere near being anywhere close to being able to be released. Not with the

things that he said today. He presents way too much of a risk, and we think that there has to be a significant sentence to address the immediate harm that he presents and then a significant period of supervision. I know the Court isn't a fan of lifetime, but in the appropriate case it will do it, and I know the Court has. I think lifetime here is appropriate given that his lifetime has had sexual assaults against children, hands-on sexual assaults against children, and no insight.

So we ask the Court at least 220 months followed by a lifetime period of supervision.

THE COURT: Thank you.

MS. MASTERSON: Thank you.

THE COURT: Mr. Kaplan, anything further from you?

MR. KAPLAN: Just briefly, Judge.

To clear up one thing, in my sentencing memorandum, I said the following. This is on page 6: "In Count Two, certainly Mr. Sheltra's conduct was more serious in that the evidence introduced at trial was that on one occasion he touched a 13-year-old girl mostly above her clothing, in an inappropriate manner." So it wasn't my intent to acknowledge that he actually did that, but I assumed that the Court would listen to what was said at trial and put some weight on that, and so I think it was mischaracterized by the Government, probably unintentionally, but that wasn't my intent.

I do think the charts are helpful. They talk about sexual abuse in addition to talking about child pornography. I referenced the one that deals with sexual abuse. I think it is interesting to know what the average is in these cases. Obviously the Court will make any distinction it wants to.

I was somewhat surprised to hear the Government minimize Rodimon's conduct. To argue that, well, maybe it's okay because he thought he had a relationship with the mother I don't think in any way negates just how serious that conduct was. But I agree with the Government that case is closer in terms of what took place to this case, and if that's the case, I don't know why a 10-year sentence, at least a sentence in the range of 10 to 14 years, is not appropriate.

And Folks, one other misstatement. He was also convicted of sex trafficking with a minor, which carried a mandatory minimum of 10 years.

THE COURT: All right. Thank you.

The Court begins with the presentence report. I am going to strike paragraphs 25, 26, 27, 28, and 30 from the presentence report. I'm going to maintain 24, 29, and 31 with the addition to 31 of the "alleged" abuse. The Court thinks this strikes the appropriate balance between ensuring that inflammatory information that has not been proved up does not remain in the presentence report but also reflecting that V1 was on the Government's witness list; she was going to be an

impeachment or rebuttal witness on the issue of whether or not any of the conduct predated Mr. Sheltra's stroke; and she did in fact reach out to law enforcement after his case became public and, unsolicited, made a report that indicated that she had been a previous victim and provided the dates, and the Court finds that that is important information not only for the context in which this occurred and to rebut the defense of a medical condition but also for supervision purposes.

So with that alteration, the Court adopts the presentence report as its findings of fact in this matter.

With regard to obstruction of justice, an enhancement for perjury under Section 3C1.1 requires a sentencing court to find that the defendant willfully and materially committed perjury, which is the intentional giving of false testimony as to a material matter, and the fact that a defendant testifies at trial and is disbelieved by the jury and convicted is not alone sufficient evidence of perjury to bring about the sentence enhancement and -- because you could have testified from inaccurate testimony due to confusion, mistake, or faulty memory.

In this particular case, the Court does find that there were two instances of material false statements made willfully, and one was Mr. Sheltra testified under oath that he had no sexual interest in children, and the other he testified that when he asked ER to send him pictures of her genitalia, he

thought he was communicating with a woman named Treena. I'll take the first issue first.

Mr. Sheltra thinks that he has been misunderstood. I think he has been partially misunderstood. So I am confident that he has an interest in sexual activity with people other than children and that he was interested in the mothers of these children, but it is not accurate that that is the only area of his interest, and the evidence to the contrary is compelling. So prior to the counts of conviction, he had a lengthy exchange with a woman -- or a purported woman with -- whose name was Alisha with a capital A: "I really want to F you, but I want both."

"I am so f'ing horny, about to cum thinking about f'ing you both. Please hurry home, Randy."

"That's really good because I'm so f'ing horny, and I definitely can't wait to F you and her."

"God, I can't wait to F both of you. I want to cum deep inside you both."

"When are you guys coming home so I can F you both?"

"Still desperately wanting you both."

"Hi Alisha. Wanting you two so badly. I've been waiting to hear from you. I need you both now. I want the both of you so bad."

Then with the undercover agent who's got the daughter Maddie, statements such as "When my mouth is bringing pleasure

to your daughter, it will be you that is holding her hand, caressing her, and encouraging her."

"While my comments regarding bringing Maddie pleasure are genuine, I look forward to being intimate with both you and her."

"I'll then proceed slowly to position her and I -- so that I can tongue her young labia and stimulate her clit with my lips and tongue."

"I want to feel her cum in my mouth, babe. I want to suck on her beautiful little pussy as she quivers in the pleasure of orgasm." And it goes on and on.

The correspondence with ER is also graphic. It indicates a clear interest in children. If that was not enough, the Government showed images of child pornography on the defendant's phone.

He didn't need to testify that he had no sexual interest in children. That was not something that -- he could have said he had a wide range of sexual interests, and he did, but his testimony was he was never interested in the children; he was only interested in the mothers; the mothers seemed to be offering up their children; to -- to ingratiate himself with the mothers, he pretended to have an interest in their children, and the evidence was very clearly to the contrary.

The other instance of obstruction of justice was the testimony that he thought he was communicating with Treena when

he was soliciting imagery from ER, sexual child pornography from ER, and the problem with that testimony is that the chronology does not work out. He asked for the images first, and it was only after he asked for the images that there was this mention of anal sex which he thought -- or he testified confused him as to who he was speaking with.

So the defendant's testimony that he had no sexual interest in children was contradicted by the evidence presented at trial, specifically the defendant's correspondence with the undercover officer in which he wrote to the undercover officer about how to groom the child to be willing to engage in sexual activity with him and her mother and what sexual acts he wished to perform on the child and her mother; the defendant's correspondence with ER in which he wrote about feeling her body, having ER naked at his residence, performing oral sex on ER, having sexual intercourse with ER, and asking for pictures of ER's genitalia; and then the images of child pornography on the phone.

With regard to Treena, the defendant testified that when he asked ER to send him pictures of her genitalia, he thought he was communicating with Treena, an adult woman with whom he was engaged in a sexual relationship. The defendant testified that his interactions with Treena involved anal sex and thus when ER mentioned engaging in anal sex with her boyfriend, the defendant believed he was speaking with Treena. This testimony

was false as the reference to anal sex was made after the defendant's first request to ER that she send him a picture of her genitalia. The defendant's false testimony was related to material facts, material in itself, and made with the intent to purposely obstruct justice because, if credited, defendant's testimony would negate his motive necessary for Count 1 and Count 2 and would negate an essential element of Count 3 that he requested child pornography from ER, and on that basis the Court finds that the obstruction-of-justice enhancement should apply.

With regard to the computer enhancement, the Second Circuit has endorsed the use of computer enhancement in child pornography and child exploitation charges. In the Sentencing Guidelines, the guidelines indicate that the computer enhancement should not apply if it is only incidental. They give an example of using the computer to buy tickets to take a minor to some place, and that would be an incidental use.

In the District of Vermont, because of the criticisms of the child pornography guidelines, the Court has typically not imposed the computer enhancement when it is an essential element of the offense, it's the interstate commerce connection, and the person has engaged in peer -to-peer software, which is the only way you can access it is through the computer.

This is a very different case. There's active

solicitation of sex on the Internet, finding people through it, communicating with them, and I agree with the Government that the computer allows a degree of anonymity, it allows the person to take the activity far further than they could in person, and it captures some element of the offense that allows for more multiple victims, more graphic testimony -- or graphic communications, and an ability to hide behind anonymity in the event that the person is not a willing recipient.

So the Court is going to apply the computer enhancement in this case as well.

With regard to the enhancement for a pattern of sexual activity, as -- the defendant recognizes that we have two separate occasions of prohibited sexual conduct. We have the conduct underlying Count 1 and the conduct underlying Count 2, so the Court does not need to include any conduct with Victim 1 in order to support that enhancement.

The Court begins with a guideline calculation.

Pursuant to the decisions of the Supreme Court in *United States vs. Booker* and *Gall vs. United States*, and the Second Circuit Court of Appeals' decision in *United States vs. Crosby*, in determining the following sentence, the Court has considered the United States Sentencing Guidelines applicable in this case, including all departure authority contained in the guideline policy statements, as well as all the factors enumerated in 18 USC, Section 3553(a).

The Court finds as follows:

The offense of Counts 1 and 2, attempted interstate enticement of a minor to engage in sexual activity, in violation of 18 USC, Section 2422(b), occurred on or about September 7th, 2017, and from on or about August 20th to 31st of 2017. The offense of Count 3, attempted receipt of child pornography, in violation of 18 USC, Section 2252(a)(2) and 2252(b)(1), occurred on or about August 25th, 2017. Hence the Sentencing Guidelines apply.

Counts 2 and 3 are grouped together as Count Group 2 pursuant to U.S. Sentencing Guidelines Section 3D1.2(b) because these counts involved the same victim, ER, and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan. Pursuant to U.S. Sentencing Guidelines Section 3D1.3(a), since Count 2 results in the higher offense level, it will be the controlling guideline calculation for Count Group 2.

The guideline for Count 1 is found in Section 2G1.3 of the Guidelines Manual, November 1st, 2018, edition. Pursuant to Application Note 1 of that section, a "minor" includes fictitious individuals who a law enforcement officer represented had not attained the age of 18 years and could be provided for the purpose of engaging in sexually explicit conduct. Therefore, the fictitious 10-year-old girl described by the undercover officer will be used as the minor victim of

this offense for the purpose of the guideline calculation.

The defendant was convicted of violating 18 USC, Section 2422(b); therefore, the base offense level is 28 pursuant to U.S. Sentencing Guidelines Section 2G1.3(a)(3).

Specific offense characteristics apply:

The offense involved the use of a computer or an interactive computer service, Craigslist, to entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with the minor. The defendant engaged in emails with the undercover officer enticing and encouraging the "mother" of the minor on how to groom the child to be willing to engage in sexual activity with him and her mother and what sexual acts he wished to perform on the child. Therefore, the offense level is increased by two levels pursuant to U.S. Sentencing Guidelines Section 2G1.3(b)(3)(B).

U.S. Sentencing Guidelines Section 2G1.3(a)(3), applies and the offense involved a minor who had not attained the age of 12 years. Therefore, the offense level is increased by eight levels pursuant to U.S. Sentencing Guidelines Section 2G1.3(b)(5).

The Court makes the following findings by a preponderance of the evidence, pursuant to *United States vs. Dunnigan,* that the defendant willfully obstructed or impeded or attempted to obstruct or impede the administration of justice when he provided false testimony at trial. Specifically, the Court

finds that the defendant testified under oath that he had no sexual interest in children; and the defendant testified under oath that when he asked ER to send him pictures of her genitalia, he thought he was communicating with Treena.

The defendant's false sworn testimony was related to material facts and made with the intent to purposefully obstruct justice because, if credited, defendant's testimony would negate his lack of motive for Counts 1 and 2 and would negate an essential element of Count 3, his request for child pornography from ER. Therefore, the offense level is increased by two levels pursuant to U.S. Sentencing Guidelines Section 3C1.1.

The adjusted offense level for Count 1 is 40.

The guideline for Count Group 2 is found in Section 2G1.3 of the Guidelines Manual, November 1st, 2018, edition.

The defendant was convicted of violating 18 USC, Section 2422(b); therefore, the base offense level is 28 pursuant to U.S. Sentencing Guidelines Section 2G1.3(a)(3).

Specific offense characteristics apply:

The offense involved the use of a computer or an interactive computer service, Craigslist, to persuade, induce, and entice a minor to engage in prohibited sexual conduct. The defendant engaged in online and text message communications with ER in attempts to have her engage in sexual conduct with him and successfully arranged for them to meet, where they did

engage in sexual conduct. Therefore, the offense level is reduced -- increased by two levels pursuant to U.S. Sentencing Guidelines Section 2G1.3(b)(3)(A).

The offense involved the commission of sexual contact between the defendant and ER when they met in the defendant's car and he placed his hand on her breast, under her shirt but over her bra, and placed his hand on her vagina over her pants. Therefore, the offense level is increased by two levels pursuant to U.S. Sentencing Guidelines Section 2G1.3(b)(4)(A).

The Court makes the same findings of fact by a preponderance of the evidence for Count -- as it did previously for Count 1, that the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice when he provided false testimony at trial. Therefore, the offense level is increased by two levels pursuant to U.S. Sentencing Guidelines Section 3C1.1.

The adjusted offense level for Count Group 2 is 34.

Units for the multiple-count adjustment are assigned pursuant to U.S. Sentencing Guidelines Section 3D1.4. Count 1 is assigned one unit as it has the highest offense level. Count Group 2 is assigned one-half unit as it has an offense level that is five to eight levels less serious than Count 1. There are a total of 1.5 units; therefore, the offense level for Count 1 is increased by one level.

The combined offense level is 41.

The defendant qualifies as a repeat and dangerous sex offender against minors pursuant to U.S. Sentencing Guidelines Section 4B1.5(b)(1). The Court makes the following findings:

The offense of conviction is a covered sex crime, neither Section 4B1.1 (career offender) nor subsection (a) of Section 4B1.5 applies, and the defendant engaged in a pattern of activity involving prohibited sexual conduct.

The defendant engaged in at least two separate occasions of prohibited sexual conduct:

One, the conduct underlying Count 1 of the second superseding indictment. Specifically, the defendant's attempted enticement of a minor to engage in sexual activity which he communicated with the -- when he communicated with the undercover officer, whom he believed was the mother of a 10-year-old female child who was willing to make the child available for prohibited sexual conduct with the defendant.

This conduct qualifies as prohibited sexual conduct as it violates 18 USC, Section 2422(b).

The conduct underlying Count 2 of the second superseding indictment. Specifically, the defendant's attempted enticement of a minor to engage in sexual activity when he communicated with ER to induce her to engage in prohibited sexual conduct. Additionally, when the defendant met with ER and did engage in sexual conduct with -- contact with the minor between the ages of 12 and 16.

This conduct qualifies as prohibited sexual conduct as it violates 18 USC, Section 2422(b) and 2244(a)(3).

Therefore, the offense level is increased by five levels.

The enhanced offense level is 46.

The defendant entered a not guilty plea, proceeded to trial, and was convicted; therefore, there is no reduction for acceptance of responsibility.

Pursuant to Chapter Five, Part A, comment note 2, in those instances where the offense level is calculated in excess of 43, the offense level will be treated as a level 43. Therefore, the total offense level is 43. The defendant has zero criminal history points, resulting in a criminal history category of I. The guideline range of imprisonment for an offense level of 43 and a criminal history category of I for Counts 1 and 2 is life and for Count 3 is 240 months due to the statutory maximum.

The guideline term of supervised release is five years to life per count. The defendant is ineligible for probation.

In addition to the Sentencing Guidelines, the Court considers the factors set forth in 18 USC, Section 3553(a), in an effort to impose a sentence that is sufficient, but not greater than necessary.

In deciding what is a sufficient, but not greater than necessary, sentence, the Court is directed to consider a number of factors: the nature and circumstances of the crime; your

history and characteristics; the need for the sentence imposed; the kind of sentences available; the need to avoid unwarranted sentencing disparities between defendants with similar criminal histories who've committed similar crimes, and that's why we're talking about what happens in other cases and what kind of sentences people received. The goal is to be fair to you and to be fair to them as well.

In deciding the need for the sentence imposed, the Court is directed to reflect the seriousness of the offenses; promote respect for the law; impose just punishment; protect the public from future crimes by you; impose what we call specific deterrence, say to you, "Mr. Sheltra, don't do this. It has consequences," and hopefully you'll be motivated, and also general deterrence, say to the community at large, "Children are our most vulnerable citizens. We have to protect them. We can't allow this type of activity to occur, either online or in person, because it victimizes them in a way that many, many years of therapy are not going to address." The Court also needs to make sure you get rehabilitation, mental health treatment, substance abuse treatment, vocational and educational opportunities, medical treatment in the most effective manner.

In this case, the conduct is serious by any measure. It is soliciting sexual contact of the most intimate kind with very young children and actually meeting up with someone who

you knew was not of the age of consent, and I do believe you believe genuinely that you're just a person who's very curious, you have a wide range of sexual interests; if somebody introduces a topic, you're, you know, on board to discuss it further, that's what you want to do. But in this case you actually showed up to meet the undercover officer, and you actually had in-person conduct with ER, and the danger of your fantasy world is acting on it, and it's a real danger, and it seems incredible that there are a wealth of victims willing to send people -- effectively make their own child pornography and send it to complete strangers, but it happens every day.

I don't think you appreciate the danger to the child. I say that you do that genuinely. I think that you think that it's society's values that are doing this, but I can tell you after having met many victims of sexual abuse, they don't -- they don't recover from it. It's often a lifetime problem. It affects their relationships with other people, how they view themselves, and that's because they're children, and they can't process that, and they can't separate out whether they agreed to it or they went along with it, why they didn't tell anybody, why they didn't protect themselves. It's a very, very damaging thing to do, and it's almost impossible to repair the damage. And that's something that you do need to appreciate. Whether you think that a wide array of sexual interests is okay, the real harm to a victim is something that you do need to

appreciate, and I'm not convinced that you're at that point now.

I'm not going to penalize you for going to trial. That's what we do. I wouldn't expect you to plead guilty if you didn't think you were guilty. So I respect your right to go to trial and present a defense, and you did so.

Nothing in your criminal history that I know about would suggest that you would be here. So you come to us with zero criminal history points, long-term employment, responsible employment in positions of management, as your attorney pointed out. We had one juror that said he couldn't sit on your case because you had been an excellent manager. I read the letter from your daughter, and she had nice things to say about you. But things got very far off track, and you could have stopped yourself. You knew enough that if that was in fact an undercover cop, that you were going to be in trouble, and -- and you mistakenly believed that if you asked that question, an undercover cop had to tell you the truth. But you knew enough and it's there in the communications that this was dangerous territory that you were in and that you could go to jail. And in fact, you told that to ER, that, "Hey, we can't have sex if you're not going to -- if you're not of the age of consent because I'm going to go to jail," and then you told somebody else, "Yeah, if we were in a different place, we certainly would be having sex."

I think that a life sentence is way beyond what would be imposed in this case, and I think the guidelines in that respect are unreliable. The incarceration of you for the rest of your lifetime for these offenses would be an unjust sentence. That being said, the conduct is serious enough and the danger to the public is serious enough that a lengthy sentence is warranted.

In deciding what is an appropriate sentence, I have considered other cases, but I've also considered that we're in the midst of a pandemic and that you yourself have suffered. You've been in quarantine more times than I can count. You had COVID, and you haven't been able to engage in any programming, and there's no certainty that you will be able to anytime in the future. So the Court has factored that in.

I am effectively going to impose a sentence that you will be under supervision for a lengthy period of time, either by incarceration or supervision, but I've tried to counterbalance the availability of supervised release with the incarcerative sentence so that I might be imposing a slightly more lenient incarcerative sentence and counterbalancing it with a longer time of supervised release. I do believe supervised release is sufficient to protect the public, especially for our online predators. Ms. Masterson is right that people violate, but we also catch them, and they go back to jail. So in the event that that's going to be something that you continue to do, you

will go back to jail.

For all of those reasons, the Court has determined that a total sentence of 180 months, with credit for time served, followed by a 30-year term of supervised release is a sufficient, but not greater than necessary, sentence.

It is the sentence of the Court that the defendant be committed to the custody of the Federal Bureau of Prisons for 180 months on Counts 1 and 2 and Count 3, all counts to be served concurrently, to be followed by a 30-year term of supervised release on each count, served concurrently.

The conditions of supervision are as follows:

You must not commit another federal, state, or local crime.

You must not unlawfully possess a controlled substance.

The Court finds that the defendant presents a low risk of substance abuse and, in accordance with 18 USC, Section 3583(d), 3563(a)(5), suspends the requirement that the defendant participate in drug testing while under supervision.

You must cooperate in the collection of DNA as directed by the probation officer.

You must comply with the requirements of the Sex Offender Registration and Notification Act, 42 USC, Section 16901, *et seq.*, as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were

convicted of a qualifying offense.

You must comply with the standard conditions of supervision adopted by this court. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the Court about, and bring about improvements in your conduct and condition.

You must participate in an approved program of sex offender evaluation and treatment, which may include polygraph examinations, as directed by the probation officer. Any refusal to submit to such assessment or tests as scheduled is a violation of the conditions of supervision. You will be required to pay the cost of treatment as directed by the probation officer. The Court authorizes the probation officer to release psychological reports and/or the presentence report to the treatment agency for continuity of treatment.

You must not use computer devices, as defined in 18 USC, Section 1030(e)(1); electronic devices capable of Internet access; or any media storage devices until a Computer Use Plan is developed and approved by your treatment provider and/or probation officer. Such plan, at a minimum, may require you to submit a record of Internet use, online screen names, encryption methods, and passwords utilized by you.

You must allow, at the direction of the probation officer

and at your expense, the installation of monitoring hardware or software to monitor your use of a computer system, Internet-capable devices, and/or similar electronic devices under your control.

You must provide the probation officer with access to any requested records, such as bills or invoices for credit cards, telephone and wireless communication services, television provider services, and Internet service providers.

You must provide the probation officer with a complete and current inventory of the number of computers, as defined in 18 USC, Section 1030(e)(1); electronic devices capable of Internet access; or any media storage devices used, possessed, or in your control along with a monthly log of computer access.

You must not access any computer devices, as defined in 18 USC, Section 1030(e)(1); electronic devices capable of Internet access; or any media storage devices that utilize any encryption, anonymization, "cleaning" or "wiping" software programs.

You must not view, access, or possess images or videos depicting sexually explicit conduct involving adults, as defined in 18 USC, Section 2256(2)(A), unless a psychosexual evaluation determines that access to adult pornography will not -- will not impair treatment goals or the safety of the community; child pornography, as defined in 18 USC, Section 2256(8); or visual or text content involving minors which has

sexual, prurient, or violent interests as an inherent purpose.

You must not associate or have contact, directly or indirectly through a third party, with persons under the age of 18, except -- I should say directly or through a third party and strike "indirectly," except in the presence of a responsible adult who is aware of the nature of your background and who has been approved in advance by the probation officer. Such prohibited conduct shall include the use of electronic communication, telephone, or written correspondence.

You must avoid and are prohibited from being in any areas or locations where children are likely to congregate, such as schools, day-care facilities, playgrounds, theme parks, arcades, unless prior approval has been obtained by the Probation Office.

You must not have contact, directly or through a third party, with the victims in this case. Such prohibited conduct shall include the use of electronic communication, telephone, or written correspondence.

You must submit your person and any property, house, residence, vehicles, papers, computer, other electronic communication or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in

the lawful discharge of the officer's supervision functions. Such searches may include the removal of such items for the purpose of conducting a more thorough inspection. You shall inform other residents of this condition. Failure to submit to a search may be grounds for revocation of release.

The guideline fine range is from $50,000 to $500,000. The defendant has not demonstrated an inability to pay -- the defendant has demonstrated an inability to pay a fine. Hence all fines are waived.

A special assessment of $300 is imposed, due immediately.

Both the defendant and the Government may have the right to appeal this sentence. In addition, the defendant has the right to appeal his conviction and any pretrial rulings or any trial rulings by the Court. If the defendant is unable to pay the costs of an appeal, he has the right to apply for leave to appeal *in forma pauperis*, in which event we would waive the cost of an appeal, and he may request the court to appoint counsel for him. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant. Notice of appeal by the defendant must be filed within 14 days of the date judgment is entered on the docket pursuant to Rule 4(b) of the Federal Rules of Appellate Procedure.

Ms. Masterson, do you have anything to dismiss in this case?

MS. MASTERSON: We do not, your Honor.

THE COURT: Mr. Kaplan, do you have any recommendations as to where Mr. Sheltra serves his sentence?

MR. KAPLAN: I would suggest where they provide the counseling that Mr. Sheltra would benefit from if he decides to do that. I'm trying to remember where that is.

THE COURT: Are you talking about sex offender treatment and counseling?

MR. KAPLAN: Yes. Right.

THE COURT: I know that Devens has it. I can also make a recommendation as close to Vermont in a low security setting available.

MR. KAPLAN: Actually, Fort Devens I think would be appropriate.

THE COURT: All right. And you agree with that, Mr. Sheltra?

THE DEFENDANT: I do initially, your Honor, but I would like to see the list just so that I can understand -- it's a major step, so I'd like to go over what my opportunities are with Mr. Kaplan, if I could.

THE COURT: Okay. Well, we're going to get an amended presentence report, so I'll make a recommendation to Fort Devens and find that it is -- because it is close to Vermont in the lowest security setting available to Mr. Sheltra. I also recommend that he receive sex offender treatment and

counseling, which is offered there. I will give Mr. Kaplan and Mr. Sheltra an opportunity to suggest other locations, say in the next five business days.

MR. KAPLAN: Thank you, Judge.

THE COURT: Anything further in this matter?

MR. KAPLAN: No, your Honor.

MS. MASTERSON: Not from the Government. Thank you, your Honor.

(Court was in recess at 3:55 PM.)

C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

February 10, 2022

Johanna Masse

Digitally signed by Johanna Masse
Date: 2022.02.10 09:27:17 -05'00'

Johanna Massé, RMR, CRR

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